

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: Robert Raines Z-189-16-3864

DECISION OF THE COMMANDANT APPEAL
UNITED STATES COAST GUARD

2213

Robert Raines

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 20 February 1979, an Administrative Law Judge of the United States Coast Guard at New York, New York, after a hearing at Philadelphia, Pennsylvania, on 12 February 1979, revoked Appellant's document upon finding him guilty of misconduct. The single specification of misconduct found proved alleges that Appellant, while serving as wiper aboard SS SAN ANTONIO, under authority of the captioned document, did, on 6 September 1977, while said vessel was at sea, wrongfully assault and batter with his fists a member of the crew, Harold C. Wolfe.

At the hearing, Appellant represented himself. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced into evidence two documents, including a copy of four pages of the official logbook of SS SAN ANTONIO.

In defense, Appellant introduced into evidence two certificates of discharge from vessels on which Appellant sailed subsequent to his discharge from SS SAN ANTONIO.

Subsequent to the hearing, the Administrative Law Judge entered a written decision in which he concluded that the charge and specification as alleged had been proved. He then entered an order of revocation.

The decision was served on 3 March 1979. Appeal was timely filed on 28 March 1979.

FINDINGS OF FACT

On 6 September 1977, Appellant was serving under authority of his document as wiper aboard SS SAN ANTONIO, then underway in the Suez Canal. At approximately 0645 that morning, Appellant, apparently concerned about an incident the evening before, accosted

the Chief Steward in the ship's pantry and began to direct obscenities toward him. The Chief Steward advised Appellant to stop. The Chief Steward then walked away from Appellant into the crew's messroom, where he sat down to drink a cup of coffee. Appellant followed him, made a threatening gesture, and then, without provocation, struck the Chief Steward above the right eye while the latter was still seated.

BASES OF APPEAL

This appeal has been taken from the decision and order of the Administrative Law Judge. It is contended that (1) "Appellant, who is not represented by counsel, was not meaningfully advised of his right to testify in his own behalf;" and (2) the "Judge's findings were not supported by substantial evidence of reliable and probative character."

APPEARANCE: Alder, Barish, Daniels, Levin and Creskoff, Philadelphia, Pa., by Gordon Gelfond, Esq.

OPINION

I

At the hearing, Appellant represented himself. Appellant was advised by the Investigating Officer before the hearing began "that he could testify on his own behalf, or remain silent." R-7. During the hearing, he was advised on two separate instances by the Administrative Law Judge of his right to testify in his own behalf. R-4, 19. Nevertheless, Appellant chose not to testify. In light of these circumstances, I rejected Appellant's first contention.

II

Pursuant to 46 CFR 5.20-107, a properly certified copy of four pages from the Official Logbook of SS SAN ANTONIO, was admitted into evidence. This logbook entry was prepared in substantial compliance with the requirements of 46 USC 702. As such, the entry constituted prima facie evidence of the facts recited therein, which same facts were found proved by the Administrative Law Judge. I discern no reason for rejecting the findings of the Administrative Law Judge and conclude that the charge against Appellant has been proved by substantial evidence of a reliable and probative character.

III

Appellant has a substantial prior record of misconduct, including one instance of assault involving the use of a firearm

for which his merchant mariner's document previously was revoked. In light of this record, and the assault and battery found proved here, I concur in the Administrative Law Judge's determination that revocation is the appropriate sanction.

ORDER

The order of the Administrative Law Judge, dated at New York, New York, on 20 February 1979, is AFFIRMED.

R. H. SCARBOROUGH
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D.C., this 23rd day of May 1980.

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